

**United States Department of Labor
Employees' Compensation Appeals Board**

E.M., Appellant

and

**DEPARTMENT OF LABOR, EMPLOYMENT
STANDARDS ADMINISTRATION,
Tampa, FL, Employer**

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**Docket No. 08-472
Issued: August 14, 2008**

Appearances:

*William Hackney, for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 5, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated October 11, 2007 which denied modification of a decision denying appellant's claim for an occupational disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she developed carpal tunnel syndrome, arthritis and low back pain while in the performance of duty.

FACTUAL HISTORY

On November 29, 2005 appellant, then a 49-year-old wage and hour compliance specialist, filed an occupational disease claim alleging that she developed carpal tunnel syndrome, arthritis and low back pain from performing repetitive duties at work. She became aware of her condition on May 1, 2003. Appellant did not stop work.

On December 7, 2005 the Office advised appellant of the type of factual and medical evidence needed to establish her claim, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted reports from Dr. Michael Coleman, a Board-certified physiatrist, noting appellant's treatment in late 2000 for neck pain and strain which he felt was aggravated by work. From March 15 to June 7, 2005, she was treated by Dr. Rafael Rodriguez, a Board-certified internist, for severe bilateral arm numbness. Dr. Rodriguez noted that appellant's history had a motor vehicle accident in August 2004 in which she was rear-ended and subsequently had arthritis in her spine and neck pain radiating into her shoulder. He noted a nerve conduction study revealed moderate carpal tunnel syndrome and cubital tunnel syndrome on the left side and an electromyogram (EMG) revealed evidence of C7-8 radiculopathy, possible left carpal tunnel syndrome and ulnar neuropathy. Dr. Rodriguez diagnosed bilateral carpal tunnel syndrome, moderately severe, C7-8 radiculopathy on the right, left ulnar compressive neuropathy at the elbow on the left and cervical cord compression. Appellant sought treatment from Dr. Donna Saatman, a neurologist, on September 27, 2005, for neck pain and weakness and numbness on the right side. Dr. Saatman diagnosed degeneration of the cervical intervertebral disc, degeneration of lumbar or lumbosacral intervertebral disc and right carpal tunnel syndrome. She opined that appellant's right arm symptoms originated from cervical radiculopathy and peripheral neuropathy and coincided with the diagnosis of bilateral carpal tunnel syndrome and right S1 radiculopathy. On January 3, 2006 Dr. Saatman advised that appellant would be totally disabled from January 9 to February 13, 2006.

On January 23, 2006 the Office denied appellant's claim on the grounds that the medical evidence did not establish that her condition was caused by her employment duties.

Thereafter, appellant submitted treatment notes from Dr. Antonio Rivera, a Board-certified physiatrist, who treated appellant beginning in 2001 for various conditions including neck and shoulder pain.¹ She also requested reconsideration and provided additional medical evidence. On May 2, 2006 Dr. Rodriguez diagnosed bilateral carpal tunnel syndrome and opined that the condition was caused by repetitive work duties. On May 26, 2006 appellant was treated by Dr. Diana Roque, a Board-certified internist, who opined that appellant's right carpal tunnel was caused by computer-related work. In a June 12, 2006 report, Dr. Saatman noted performing a right carpal tunnel release on January 9, 2006. She noted that "it is the feeling" that appellant's condition was caused by data entry, excessive writing and computer work she performed for nine years.

In a decision dated August 24, 2006, the Office denied modification of the prior decision on the grounds that evidence of record was insufficient to establish that the condition claimed was caused or worsened by her work duties.²

¹ On March 13, 2006 appellant requested an oral hearing which the Office denied, on April 14, 2006, as not being timely filed.

² On August 25, 2006 appellant filed a claim for carpal tunnel syndrome, Claim No. 112036262. The Office, on September 15, 2006, advised that this was a duplicate of Claim No. 11-2032027. It deleted the duplicate claim.

On November 6 and 13, 2006 appellant requested reconsideration and noted performing repetitive tasks while working at the employment establishment for 17 years. Medical evidence submitted included a May 3, 2001 cervical spine x-ray showing mild degenerative change at C5-C6, and a July 29, 2006 magnetic resonance imaging (MRI) scan of the lumbar spine showing paracentral L5-S1 disc protrusion affecting the right S1 nerve. On September 12, 2006 Dr. Roque diagnosed left carpal tunnel syndrome, cervical spondylosis and lumbar disc disease and noted appellant could work full time with restrictions. On September 13, 2006 she stated that appellant's carpal tunnel syndrome, tendinitis and cervical radiculitis were employment related. In October 13 and November 3, 2006 notes, Dr. Roque stated that appellant had severe neck pain with radiation to her arms and carpal tunnel syndrome since 2001. She opined that appellant's work significantly worsened her condition and she was presently disabled. On October 16, 2006 Dr. Saatman noted treating appellant since July 7, 2005 and diagnosed cervical spine disc degeneration and bilateral carpal tunnel syndrome. Appellant attributed her back and neck pain and left carpal tunnel syndrome to her work but the physician stated that it was impossible to speculate what caused appellant's carpal tunnel, cervical spine spondylosis and lumbar degeneration; however, she opined that appellant's employment duties could significantly contribute to the progression of her disease.

In a decision dated February 23, 2007, the Office denied modification of the prior decision on the grounds that the medical evidence of record was insufficient to establish a causal connection between the claimed condition and the specific work-related activity.

On May 8, 2007 appellant requested reconsideration. She submitted an April 26, 2007 report from Dr. Saatman who opined that appellant's work activities including computer typing, lifting files, conducting negotiations and transcribing statements contributed to her carpal tunnel syndrome, cervical spine spondylosis and lumbar spine degeneration. Dr. Saatman noted that appellant's symptoms began in November 2000, before her 2004 automobile accident. In a May 2, 2007 note, Dr. Roque diagnosed bilateral carpal tunnel syndrome and cervical and lumbar radiculopathy and opined that appellant's symptoms worsened when she was at work lifting, carrying and repetitively using her hands when typing.

In a June 29, 2007 decision, the Office denied modification of its prior decision as the medical evidence did not establish that her claimed conditions were work related.

On August 23, 2007 appellant requested reconsideration and submitted an August 8, 2007 attending physician's report from Dr. Saatman who diagnosed bilateral carpal tunnel syndrome, cervical spine spondylosis and noted with a checkmark "yes" that appellant's condition was caused or aggravated by her employment. She explained that appellant used her hands to perform repetitive duties including typing, carrying a briefcase and data entry which precipitated and aggravated her preexisting carpal tunnel and cervical spondylosis. In an August 14, 2007 report, Dr. Saatman noted appellant's diagnoses and opined that her work duties, including computer typing, lifting files, conducting negotiations and transcribing statements significantly worsened her carpal tunnel syndrome, cervical spine spondylosis and lumbar spine degeneration. An August 10, 2007 cervical spine MRI scan revealed a C5-6 anterior fusion with C4-5 and C6-7 disc protrusions. An August 10, 2007 MRI scan of the right wrist showed a small ganglion cyst.

In an October 11, 2007 decision, the Office denied modification of the claim finding that the medical evidence did not establish that her claimed conditions were work related.³

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

³ On November 16, 2007 appellant filed an occupational disease claim for bilateral carpal tunnel syndrome, Claim No. 11-2042209. The Office consolidated Claim No. 11-2042209 with the current claim before the Board, No. 11-2032027, as both claims allege appellant developed the same conditions from performing repetitive duties at work. On December 5, 2007 appellant appealed the October 11, 2007 decision to the Board. She submitted additional evidence to the Office after issuance of the Office's October 11, 2007 decision. On February 7, 2008 the Office issued a merit decision accepting appellant's claim for bilateral carpal tunnel syndrome and aggravated cervical spondylosis without myelopathy. However, as the Board acquired jurisdiction over the appeal on December 5, 2007, the February 7, 2008 Office decision is null and void. The Board and the Office may not have concurrent jurisdiction over the same issue in a case; see *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990). The Board also may not consider new evidence on appeal. 20 C.F.R. § 501.2(c).

⁴ *Gary J. Watling*, 52 ECAB 357 (2001).

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS

It is not disputed that appellant's duties as a wage and hour compliance specialist included repetitive activities using her hands including typing, keyboarding, transcribing and sitting for long periods of time. It is also not disputed that appellant has been diagnosed with bilateral carpal tunnel syndrome, cervical spine spondylosis and lumber spine degeneration. However, appellant has not submitted sufficient medical evidence to establish that bilateral carpal tunnel syndrome, cervical spine spondylosis and lumber spine degeneration are causally related to specific employment factors or conditions.

Appellant submitted reports from Dr. Coleman from late 2000 diagnosing neck pain and strain that were aggravated by work. However, Dr. Coleman did not provide rationale regarding causal relationship that explained how or why the employment activities caused or contributed to a diagnosed condition.⁶ His opinion is insufficient to establish the claim.

In reports dated March 15 to June 7, 2005, Dr. Rodriguez noted diagnoses and advised that appellant's history was significant for a motor vehicle accident in August 2004 after which she had arthritis in her spine and severe neck radiating pain. He did not attribute appellant's condition to her work duties, rather, he attributed her condition to a motor vehicle accident in 2004. On May 2, 2006 Dr. Rodriguez diagnosed bilateral carpal tunnel syndrome and opined that appellant's condition was caused by her repetitive work duties. However, this report is conclusory and does not contain rationale in which the physician explains the reasons why appellant's bilateral carpal tunnel condition was work related and why appellant's symptoms would not be attributable to the 2004 motor vehicle accident.

In a report dated June 12, 2006, Dr. Saatman diagnosed carpal tunnel syndrome and noted that "it is the feeling" that appellant's condition was promoted by her occupation of data entry. On October 16, 2006 she diagnosed cervical spine disc degeneration and bilateral carpal tunnel syndrome and advised that it was "impossible to speculate" on the cause of appellant's bilateral carpal tunnel, cervical spine spondylosis and lumbar spine degeneration but that appellant's employment "can exacerbate" the progression of her disease. Although, Dr. Saatman indicated that appellant's job could exacerbate her medical conditions, this opinion was couched in speculative terms. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.⁷ In reports dated April 26 and August 14, 2007, Dr. Saatman diagnosed bilateral carpal tunnel syndrome, cervical spine spondylosis and lumber spine degeneration and opined that appellant's work activities significantly caused and worsened the carpal tunnel syndrome, cervical spine spondylosis and lumber spine degeneration. These reports are insufficient because Dr. Saatman did not provide a rationalized opinion

⁶ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001). Furthermore, a diagnosis of pain does not constitute the basis for payment of compensation. *Robert Broome*, 55 ECAB 339 (2004).

⁷ *See Kathy A. Kelley*, 55 ECAB 2006 (2004) (where the Board found a physician's statement that appellant's work duties "may be" aggravating his knee condition to be speculative and of diminished probative value); *Jennifer Beville*, 33 ECAB 1970 (1982) (where the Board found a physician's statement that appellant's complaints "could have been" related to an employment incident to be speculative and of limited probative value).

regarding the causal relationship between appellant's conditions and the factors of employment believed to have caused or contributed to such condition.⁸ For example, the physician did not explain the process by which repetitive activities would cause the diagnosed conditions and why such conditions would not be due to nonwork factors such as the 2004 car accident which caused chronic neck and shoulder pain. Likewise, in an August 8, 2007 attending physician's report Dr. Saatman opined that certain duties caused or aggravated appellant's diagnosed condition but she did not explain the processes by which performance of such duties would cause or aggravate any medical condition. Other reports from Dr. Saatman did not specifically address whether appellant's employment activities caused or aggravated a diagnosed condition.

Reports from Dr. Roque, dated May 26, 2006 to May 2, 2007, diagnosed bilateral carpal tunnel syndrome and cervical and lumbar radiculopathy and opined that appellant's work duties including repetitive use of her hands made her condition worse. However, these reports do not contain rationale in which the physician explains the reasons why appellant's bilateral carpal tunnel syndrome and cervical and lumbar radiculopathy were work related and why appellant's symptoms would not be attributable to the automobile accident in which she was rear-ended in 2004.

The remainder of the medical evidence, including reports from Dr. Rivera, MRI scans of the lumbar spine and wrist, fail to provide a specific opinion on the causal relationship between appellant's job duties and her diagnosed carpal tunnel syndrome, cervical spine spondylosis and lumbar spine degeneration. For this reason, this evidence is not sufficient to meet appellant's burden of proof.⁹

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹⁰ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she developed an employment-related injury in the performance of duty.

⁸ See *Jimmie H. Duckett*, *supra* note 6.

⁹ A.D., 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the October 11, June 29 and February 23, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 14, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board